

NKS Distributors, Inc., d/b/a Century Wine and Spirits and West Coast Industrial Relations Association, Inc. and General Teamsters Local Union No. 326, a/w International Brotherhood of Teamsters, AFL-CIO¹

Delaware Beverage Co. and West Coast Industrial Relations Association, Inc. and General Teamsters Local Union No. 326, a/w International Brotherhood of Teamsters, AFL-CIO

Eugene M. Tigani, Steven D. Tigani, J. Paul Tigani, J. Vincent Tigani, Jr., F. Gregory Tigani, J. Paul Tigani (u/w of Joseph P. Tigani), and Francis G. Tigani, a Partnership d/b/a Standard Distributing Co. and West Coast Industrial Relations Association, Inc. and General Teamsters Local Union No. 326, a/w International Brotherhood of Teamsters, AFL-CIO

N.K.S. Distributors, Inc. and West Coast Industrial Relations Association, Inc. and General Teamsters Local Union No. 326, a/w International Brotherhood of Teamsters, AFL-CIO. Cases 4-CA-17616-1, 4-CA-17616-2, 4-CA-17616-3, 4-CA-17616-4, 4-CA-17888, and 4-CA-17889

May 28, 1993

ORDER DENYING MOTION

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On August 26, 1991, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding² in which the Board remanded portions of the proceeding and also found, *inter alia*, that Respondent Distributors³ and Respondent West Coast Industrial Relations Association, Inc. (West Coast) engaged in certain unfair labor practices, including violating Section 8(a)(1) of the Act by interrogating an employment applicant about his union membership.

Thereafter, the Charging Party (the Union) and Respondent Distributors entered into a new collective-bargaining agreement and an additional agreement settling all allegations of unlawful conduct by the Respondent Distributors in the instant case. In light of these agreements, the General Counsel, Respondent Distributors, and the Union filed a joint motion for approval of partial withdrawal and dismissal of the charges before the judge on remand from the Board. The judge granted the motion by order dated April 28, 1992. On June 15, 1992, the Union and Respondent Distributors filed a joint motion to remand portions of the charge in Cases 4-CA-17616-1, 4-CA-17616-2,

4-CA-17616-3, and 4-CA-17616-4, and Case 4-CA-17889 to the Regional Director for approval of withdrawal requests with respect to all portions of the charges and amended consolidated complaint except for the Board's finding that Respondent West Coast violated Section 8(a)(1) of the Act by interrogating an applicant for employment. The General Counsel did not oppose the motion. By Order dated June 19, 1992, the Board granted this motion, and the Regional Director, by order dated July 29, 1992, approved the request for withdrawal of the charges and dismissed the portions of the complaint related thereto.

On February 18, 1993, Respondent West Coast filed the instant motion to reopen proceedings and to dismiss complaint, and/or to amend Order. In its motion, Respondent West Coast contends that the one remaining portion of this case, *i.e.*, the allegation and finding that Respondent West Coast unlawfully interrogated an employment applicant, should be dismissed in light of the settlement of all charges against Respondent Distributors.

Respondent West Coast offers two arguments in support of its contention that the complaint should be dismissed. First, Respondent West Coast argues that because it was the agent of Respondent Distributors, the settlement agreement releasing Respondent Distributors operates to release Respondent West Coast as well. Alternatively, Respondent West Coast argues that, in light of the dismissal of all other portions of the complaint, the Board's Order should be amended to dismiss the complaint against Respondent West Coast because the only portion remaining is an isolated instance of interrogation that the judge found did not warrant a remedial order.⁴ We disagree with both of these arguments.⁵

With respect to Respondent West Coast's first argument, it is important to bear in mind that this is not a case where the agent was found to have violated the Act notwithstanding the fact that the same allegation of unlawful conduct against the principal was dismissed on the merits. Rather, as noted above, all Respondents, both the principal (Respondent Distributors) and the agent (Respondent West Coast), were found to have violated Section 8(a)(1) by unlawfully interrogating an applicant for employment, and all were required to

¹ The name of the Charging Party has been changed to reflect the new official name of the International Union.

² 304 NLRB 338 (1991).

³ Respondents NKS Distributors, Inc., d/b/a Century Wine and Spirits, Delaware Beverage Co., Eugene M. Tigani et al. d/b/a Standard Distributing Co. and N.K.S. Distributors, Inc.

⁴ The judge found that Respondent Distributors and Respondent West Coast did not engage in any unlawful conduct other than the unlawful interrogation, and thus concluded that a remedial order was not required. The Board's decision found an additional violation, and reversed certain of the judge's findings of no unlawful conduct and remanded those findings with instructions to reopen the record. In light of the additional finding of unlawful conduct, the Board found that a remedial order was warranted for the finding of unlawful interrogation.

⁵ In their oppositions to the motion, the General Counsel and the Union both contend that Respondent West Coast's motion is not timely. In light of our ruling below, we shall not address the timeliness issue and shall treat the motion as timely.

post a notice to remedy this violation. Thereafter, Respondent Distributors, by entering into a settlement agreement with the Union, satisfied their remedial obligations in a Board-approved manner. Respondent West Coast, however, neither posted the notice nor acted in some other Board-approved manner to satisfy its remedial obligations.

That Respondent West Coast is an agent of Respondent Distributors does not absolve it from fulfilling its remedial obligations. It is well settled that the Board will hold labor relations consultants responsible for their commission of unfair labor practices while acting as agents of the employer, and will require them to post a notice as part of a remedy for such unlawful conduct. See *Chalk Metal Co.*, 197 NLRB 1133 (1972); *West Coast Casket Co.*, 192 NLRB 624 (1971), *enfd.* in pertinent part 469 F.2d 871 (9th Cir. 1972). Thus, Respondent West Coast, like Respondent Distributors, was found to have violated the National Labor Relations Act and was ordered to remedy that violation by posting a notice to employees. Because the Board found that requiring Respondent West Coast—as the agent of the Respondent Distributors—to post a notice was necessary to effectuate the purposes of the Act, the need for Respondent West Coast to post the notice has not become moot merely by virtue of the fact that Respondent Distributors subsequently satisfied their own remedial obligations.

Respondent West Coast's alternative argument, that the Order should be amended to dismiss the complaint because the withdrawal of all other charges and allegations makes the interrogation an isolated occurrence, must also be rejected. As noted above, the Board adopted the judge's finding that the interrogation violated Section 8(a)(1), but did not adopt the judge's finding that the interrogation was an isolated occur-

rence, as the Board found an additional instance of unlawful conduct, and remanded other portions of the case to determine the lawfulness of certain other conduct. Thus, the Board concluded that the factual circumstances underlying the finding of an unlawful interrogation warranted an order requiring a notice posting. That other allegations, including one other finding of unlawful conduct, have subsequently been remedied does not change the factual circumstances that formed the basis for concluding that a notice should be posted.

Respondent West Coast further contends that the interrogation constituted *de minimis* conduct. This contention is inapplicable to this stage of the proceeding. An argument that conduct is *de minimis* is relevant only in determining whether the conduct constitutes an 8(a)(1) violation. As noted above, the Board found, as did the judge, that the interrogation violated the Act. Thus, Respondent West Coast may not now relitigate before the Board the question of whether such conduct violates Section 8(a)(1) of the Act.

Accordingly, in the exercise of our broad discretion under Section 10(c), we conclude that the settlement agreement involving Respondent Distributors does not obviate the need for Respondent West Coast to remedy its violation. Therefore, we shall deny Respondent West Coast's motion to dismiss the instant complaint.

IT IS ORDERED that Respondent West Coast's motion to reopen proceeding and to dismiss complaint, and/or to amend Order is denied.⁶

⁶We also deny the Union's request that the Board impose sanctions upon Respondent West Coast for all costs, including legal fees, incurred by the General Counsel and the Union because of Respondent West Coast's motion. We find Respondent West Coast's contentions to be debatable rather than frivolous. See *Heck's Inc.*, 215 NLRB 765 (1974).